

OFFICE OF THE ATTORNEY GENERAL

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CIRCULAR NO. 3301

see Page 2

In the interpretation and application of the Hatch law, a number of cases have arisen under Section 9 (a) in which doubt has been expressed and the Department has been called upon to make a ruling. In issuing this circular, it is the aim of the Department merely to summarize these rulings for the benefit and information of government employees and the public generally. It is not the purpose to enumerate or describe all the activities and positions to which the law may or may not apply.

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Accordingly, the circular should not be regarded as a complete or comprehensive statement of all the positions and activities to which Section 9 (a) applies. The law is general in scope and (with a few prominent exceptions) forbids all officers and employees of the executive branch of the Federal Government to take any active part in political management or political campaigns.

The pertinent provisions of Section 9 are as follows:

"No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects."

I.

It has been ruled that the following officers and employees in the executive branch of the Federal Government, among others, are affected by the provisions of Section 9 of the Hatch Act:

1. United States Attorneys and Marshals, their assistants and deputies.
2. Special Attorneys of the Department of Justice and Special Assistants to the Attorney General.
3. Temporary employees, substitute employees, and per diem employees, during the period of their active employment.
4. Reserve officers of the United States Army, Navy, and Marine Corps during the period of their active duty.
5. Furloughed employees and employees on leave, whether with or without pay.
6. Officers and employees of governmental agencies such as the Home Owners Loan Corporation, the Reconstruction Finance Corporation, and the Public Works Administration.
7. Officers and employees occupying administrative and supervisory positions in the Works Projects Administration, the National Youth Administration, and the Civilian Conservation Corps.

Note: Persons employed in any administrative or supervisory capacity by any agency of the Federal government whose compensation or any part thereof is paid from funds authorized by the Emergency Relief Appropriation Act of 1939 should consult Section 31 of that Act, which limits their public expression of opinions on political subjects more strictly than does the Hatch Act.

II.

Section 9 of the Hatch Act has been construed as not applying to the following:

1. Officers and employees of the legislative branch of the Federal Government, including secretaries and clerks to members of Congress and Congressional committees.
2. Officers and employees of the judicial branch of the Federal Government, including United States Commissioners, Clerks of United States Courts, Referees in Bankruptcy, and their secretaries, deputies, and clerks.
3. Officers and employees of State and local governments, even though their employment involves the expenditure of Federal funds.
4. Persons who are retained from time to time to perform special services on a fee basis and who take no oath of office, such as fee attorneys, inspectors, appraisers, and management brokers for the Home Owners Loan Corporation and special fee attorneys for the Reconstruction Finance Corporation.
5. Persons who receive benefit payments, such as old age assistance and unemployment compensation under the Social Security Act, rural rehabilitation grants, and payments under the Agricultural Conservation Program.
6. Retired employees.

III.

It has been ruled that the following acts constitute taking an "active part in political management or in political campaigns" within the meaning of Section 9 of the Hatch Act:

1. Holding office in a political party or a political club.
2. Attending political conventions as a delegate or alternate.
3. Serving on committees of a political party or a political club.
4. Distributing buttons or printed matter in support of any candidate or party.
5. Serving at party headquarters or as watchers at the polls, or otherwise assisting a party or candidate in any primary or election campaign, whether or not Federal offices are involved.
6. Being a candidate for elective office--Federal, State, or local.
7. Soliciting funds for a political organization or campaign fund.

Note: Severe penalties are provided under Section 5 of the Hatch Act for those who solicit or receive any assessment, subscription, or contribution for any political purpose from a person known to be receiving compensation, employment, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes. Such persons include the administrative and supervisory personnel of relief agencies, as well as the actual recipients of relief.

IV.

The following activities are not considered to be prohibited by the Hatch Act:

1. Holding membership in a political organization and attending its meetings otherwise than as an officer or delegate.
2. Participating in the activities of civic associations and educational groups, provided the activities in question are divorced from the campaigns of particular candidates or parties.
3. Holding a State or local office (but see III (6) above).

Note: An executive order of January 17, 1873 forbids persons holding a Federal civil office by appointment from holding any State or municipal office, with the exception of positions such as justice of the peace, notary public, commissioner to take acknowledgement of deeds or bail or to administer oaths, and positions on boards of education, school committees, public libraries, and in religious or eleemosynary institutions. Special exceptions are made in subsequent executive orders.

Circulars summarizing additional rulings will be issued as the necessity arises.

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